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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ETHAN D. MYERS,  
*Complainant,*

v.

LAKE LEMON CONSERVANCY DISTRICT,  
*Respondent.*

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Formal Complaint No.  
21-FC-93

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Lake Lemon Conservancy District violated the Access to Public Records Act.<sup>1</sup> Attorney Daniel M. Cyr filed an answer on behalf of the district. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 7, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

On May 28, 2021, attorney Ethan D. Myers (Complainant) submitted a public records request to the Lake Lemon Conservancy District on behalf of his client and property owner Frank Van Overmeiren seeking the following:

1. All notes, minutes, agendas, and recordings of the Lake Lemon Conservancy District Executive Session meeting that occurred on Saturday, June 20th, 2020.
2. All emails, texts, notes, and any other written communication between Lake Lemon Conservancy District Board Members and staff from June 1<sup>st</sup>, 2020 through July 20th, 2020 where such communication involved Lake Lemon Conservancy Board Members or employees. For purposes of this request, the following criteria should help in narrowing your search:
  - a. The subject of these emails includes any discussion about Michael Blackwell (directly or indirectly), Frank Van Overmeiren (directly or indirectly), the executive session held on June 20<sup>th</sup>, and/or any bond issues.
  - b. The senders include any Lake Lemon Conservancy District Board members that were active during the above time frame and any Lake Lemon Conservancy District employees that were employed during the above time frame.
  - c. The receivers include any Lake Lemon Conservancy District Board members that were active during the above time frame and any Lake Lemon Conservancy District employees that were employed during the above time frame.
  - d. This includes, without limitation, all emails sent or received by Adam Casey, the Lake Lemon Conservancy District office email (office@lakelemon.org), Michael Klitzing, Debi Ladyman, Mary Jane Brown, Les Wadzinski, Pam Dugan, Steven Priddy, and Mike Blackwell.

Myers contends that Lake Lemon Conservancy District refused to acknowledge receiving the request and failed to answer the request. As a result, Myers filed a formal complaint on July 7, 2021, alleging the LLCDC violated the Access to Public Records Act (APRA) by failing to acknowledge the request.

On August 24, 2021, the LLCDC filed a response to Myers' complaint. The conservancy district contends it acknowledged the records request during a public meeting on June 24, 2021, which the board conducted virtually on Zoom. LLCDC asserts that Myers' client Frank Van Overmeiren participated in the meeting where it acknowledged the request.

The Lake Lemon Conservancy District notes that it is in the process of providing records responsive to the request. Specifically, the district notes its search is complete and it is reviewing the records for responsiveness and verifying they are disclosable. The LLCD asserts that it will produce the disclosable records within two weeks.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. Lake Lemon Conservancy District is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy LLCD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

### 2. Responding to a request

The crux of this dispute is whether Lake Lemon Conservancy District failed to respond to a public records request in violation of the Access to Public Records Act.

Under APRA, a written public records request is considered denied seven days after the agency receives the request. *See*

Ind. Code § 5-14-3-9(c). In other words, when a written request has been made and there is no response for more than seven days, the request is denied. The most common initial response is a written acknowledgement by the agency.

Here, Myers contends that he submitted a request to Lake Lemon Conservancy District, on behalf of his client, on May 28, 2021. Myers argues that the district did not acknowledge the request or answer it.

Lake Lemon Conservancy District argues that it acknowledged the request during a public meeting of the board on June 24, 2021, which Myers' client attended via Zoom.

Based on the information provided, this office concludes that Lake Lemon Conservancy District did not properly respond to the request at issue in this complaint. The district does not dispute that it received the request on May 28, 2021. As a result, it needed to at least acknowledge the request within seven days to avoid triggering an automatic denial under APRA. This is important because any person or organization who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county where the denial occurred. Ind. Code § 5-14-3-9(e).

The best approach for the district going forward is to provide a timely written acknowledgement any time the district receives a records request.

As a final aside, this office is encouraged that Lake Lemon Conservancy District committed to providing the responsive records in the coming days.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that Lake Lemon Conservancy District's failure to respond to the records request in this case constitutes noncompliance with the Access to Public Records Act.



Luke H. Britt  
Public Access Counselor